

5 Official Opinions of the Compliance Board 102 (2007)

ADMINISTRATIVE/EXECUTIVE FUNCTION – EXCLUSION – DISCUSSION OF COMPLAINT AGAINST PSYCHOLOGIST, HELD TO BE WITHIN THE EXCLUSION

January 26, 2007

Mr. W. Scott Wood

The Open Meetings Compliance Board has considered your complaint that the Board of Examiners of Psychologists may have violated the Open Meetings Act by failing to provide proper notice of, or after-the-fact disclosures about, a meeting to consider your complaint against a particular psychologist. For the reasons stated below, the Compliance Board finds that there was no violation.

I

Complaint and Response

The background to the Open Meetings Act complaint was an earlier complaint that you had filed against a psychologist, the details of which are not material to this Open Meetings Act matter. The complaint was filed in July 2001. By letter dated December 17, 2001, the Board of Examiners of Psychologists (hereafter “Psychology Board”) informed you that on December 14, 2001, it had “met and discussed your complaint against [the psychologist’s] practice. Subsequently, the Board voted to dismiss the complaint” The letter went on to say that the Psychology Board “is prohibited from revealing to the complainant or to the public what case facts were supported by evidence and how the Board applied the law to the facts. The results of an investigation are kept confidential.”

In your complaint to the Open Meetings Compliance Board, you stated that the manner in which the Psychology Board had resolved your complaint against the psychologist “is a clear violation of the Maryland Open Meetings Act. As stated in the [Psychology Board’s] final letter ..., there was a meeting which I was never informed of.” It is not clear from the complaint whether the “meeting which I was never informed of” referred to the meeting on December 14, 2001, or perhaps to another meeting at which the Psychology Board had voted to dismiss the complaint.¹

¹ It may seem odd that the Compliance Board, in early 2007, is entertaining a complaint about a meeting that took place in 2001. The Open Meetings Act, however, does

The complaint requested information on “where and when this meeting occurred and who attended this meeting.”²

In a timely response on behalf of the Psychology Board, Lorraine W. Smith, the Board’s Administrator, confirmed that the Psychology Board had met on December 14, 2001, to discuss the complaint against the psychologist and, at that meeting, voted on its disposition. The response likewise confirmed that the meeting was closed, and no notice of the closed session was given to the public.³ While minutes were kept, neither the minutes nor any information from them is available to the public. Ms. Smith denied that these practices violated the Act, however, because the closed session on December 14, 2001, was said to constitute an executive function not subject to the Open Meetings Act.

II

Analysis

At the time of the meeting in question, a public body was not subject to the Open Meetings Act, including its requirements about notice, public observation, and minutes, when it engaged in an “executive function,” now called an “administrative function.”⁴ § 10-503(a)(1)(i). A public body was engaged in an executive function whenever it simply administered a law for which it had responsibility. §10-502(d)(1)(i).

not contain a time limitation on the filing of complaints with the Compliance Board. *See* 3 *OMCB Opinions* 352 (2003) (Opinion 03-20). *Cf.* § 10-510(b)(2) and (3) of the State Government Article, Annotated Code of Maryland (statute of limitations for judicial enforcement actions). Except as otherwise indicated, all statutory references are to the State Government Article.

² The complaint to the Compliance Board also requested “access to the file with all information regarding my complaint obtained by the [Psychology Board.]” Even were we to find a violation of the Open Meetings Act, we have no authority to require this or any other disclosure related to the processing of the complaint against the psychologist. The substantive and procedural requirements relating to access to a government agency’s file are found in the Maryland Public Information Act.

³ Ms. Smith pointed out that closed sessions are held on the same days as open sessions of the Psychology Board, for which appropriate public notice is given.

⁴ The change in terminology became effective on October 1, 2006. In this opinion, we use the term “executive function,” which was in the law at the time of the Psychology Board’s meeting.

That is what the Psychology Board was doing on December 14, 2001, in connection with your complaint. Under §18-206(b) of the Health Occupations Article, the Psychology Board has a duty to receive and investigate complaints against licensed psychologists. In doing so, it applies existing law about the grounds for discipline, set forth in §18-313 of the Health Occupations Article, to the facts produced during the investigation. This is the essence of administering existing law, and hence, of the executive function exclusion from the Act. *See, e.g., 1 OMCB Opinions 13 (1992) (Opinion No. 92-4).*

III

Conclusion

In summary, the Open Meetings Complaint Board finds that the Board of Examiners of Psychologists did not violate the Open Meetings Act by holding a closed meeting on December 14, 2001, without notice to the public or subsequent disclosure of information about the meeting, because the topic of the meeting was excluded from the Act.

OPEN MEETINGS COMPLIANCE BOARD

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